STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

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SPRINT COMMUNICATIONS L.P. d/b/a SPRINT COMMUNICATIONS COMPANY L.P., SPRINTCOM, INC., WIRELESSCO, L.P., NEXTEL WEST CORP., and, NPCR, INC.,	)	
Complainants,	)	
v.	)	**Docket No. 07- 0629**
ILLINOIS BELL TELEPHONE COMPANY,	)	
Respondent.	)	

Direct Testimony of Scott McPhee

On Behalf of AT&T Illinois

PUBLIC VERSION

March 25, 2008

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San Ramon, California 94583.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am an Associate Director – Wholesale Regulatory Policy & Support for Pacific Bell Telephone Company d/b/a AT&T California. I work in the Wholesale Customer Care organization on behalf of the AT&T incumbent local exchange carriers ("ILECs") throughout AT&T's 22-state Regional Bell Operating Company region, including Illinois Bell Telephone Company ("AT&T Illinois"). I am responsible for researching, supporting, and communicating AT&T's product policy positions in regulatory proceedings across the 22 AT&T ILEC states, including Illinois.

Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A. I began employment with SBC in 2000 in the Wholesale Marketing – Industry Markets organization as Product Manager for Reciprocal Compensation throughout SBC's 13-state region. My responsibilities included identifying policy and product issues to assist negotiations and witnesses addressing SBC's reciprocal compensation and interconnection arrangements, as well as SBC's transit traffic offering. In June of 2003, I moved into my current role as an Associate Director in the Wholesale Marketing Product Regulatory organization. In this position, my responsibilities include helping define AT&T's positions on certain issues for Wholesale Marketing, and ensuring that those positions are consistently articulated in proceedings before state commissions. Prior to joining SBC, I spent nine and a half years working in the insurance industry, primarily as an underwriter of worker's compensation insurance.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I received my Bachelor of Arts degree with a double major in Economics and Political Science from the University of California at Davis.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY COMMISSIONS?

A. Yes, I have filed testimony and/or appeared in regulatory proceedings in 12 of the 13 former SBC states where AT&T provides local service, as well as in the states of Alabama, Georgia, Louisiana, North Carolina and South Carolina. I have provided written and/or live testimony before the Illinois Commerce Commission ("Commission") in Docket No. 04-0469 (MCI/ SBC Illinois arbitration); Docket No. 04-0428 (Level 3/SBC Illinois arbitration); and Docket No. 04-0746, *Illinois Bell Telephone Company v. Data Net Systems, L.L.C. Formal Complaint pursuant to Section 10-108 of the Public Utilities Act.*

II. PURPOSE

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. My testimony explains AT&T Illinois' position with regard to certain aspects of Sprint's[1] request to port an interconnection agreement from Kentucky (the "Kentucky ICA") to Illinois, pursuant to Merger Commitment 7.1, which is a commitment AT&T made to the Federal Communications Commission ("FCC") in connection with the merger between AT&T Inc. and BellSouth Corporation. Merger Commitment 7.1 permits a requesting carrier to "port" an interconnection agreement from one of the 22 AT&T ILEC states to another, but subject to certain limitations, which I describe below. Generally, these

[1] For purposes of my testimony, the term "Sprint" includes the Complainants Sprint Communications L.P., SprintCom, Inc., WirelessCo, L.P., Nextel West Corp, and NPCR, Inc.

limitations ensure that a requesting carrier neither ends up with an interconnection agreement that simply doesn't work in the port-to state nor unjustifiably profits from its exercise of the porting opportunity provided by the commitment.

AT&T has identified to Sprint a number of modifications that must be made to the Kentucky ICA in order for it to be ported to Illinois, and Sprint apparently opposes many of those modifications. Thus, Sprint seeks to port the Kentucky ICA into Illinois without regard for the fact that the merger commitment expressly exempts certain sorts of provisions from porting.

The most important issues I address concern the bill and keep provision and the facility price sharing provision in the Kentucky ICA. Those provisions cannot be ported under Merger Commitment 7.1 because, among other reasons, they are state-specific pricing, and state-specific pricing cannot be ported. I address the bill and keep provision in Section VII below, and the facility price sharing provision in Section VIII. I will explain why Sprint's attempt to port these Kentucky provisions to Illinois is contrary to the language and intent of Merger Commitment 7.1 and would provide Sprint with an unwarranted subsidy. The next part of my testimony, Section IX, explains why the Commission should not permit all the Complainants in this proceeding jointly to port the Kentucky ICA. This section, however, will come into play only if the Commission rejects AT&T Illinois' position on the bill and keep provision or the facility price sharing provision, which AT&T Illinois does not expect. Finally, in Section X, I discuss several additional modifications that must be made to Attachment 3 (Local Interconnection) of the Kentucky ICA in order for it to be ported to Illinois.

Before discussing any of these substantive matters, however, I provide background information that is pertinent to the testimony of all five witnesses who are testifying on behalf of AT&T Illinois in this proceeding. First, in Section III, I describe Merger Commitment 7.1 and the limitations it imposes on the porting of an interconnection agreement from one state to another; this includes a description of the "redlining" of the Kentucky ICA for use in Illinois. In Section IV, I briefly discuss the history of Sprint's request to port the Kentucky ICA to Illinois, and some of the parties' communications concerning that request. In Section V, I provide pertinent information concerning the Kentucky ICA, including the organization of the voluminous document. In Section VI, I describe the matrix, attached to this testimony as Exhibit JSM-3, in which AT&T Illinois identifies the redlined modifications that must be made to the Kentucky ICA and provides a brief statement of the reason for each modification.

III. FCC MERGER COMMITMENT 7.1 AND PORTING REQUESTS

Q. WHAT IS MERGER COMMITMENT 7.1?

A. The FCC Order approving the AT&T/Bell South merger[2] includes an Appendix F, which sets forth a number of merger commitments. The commitment referred to as "Merger Commitment 7.1" is item 1 in the seventh category, "**Reducing Transaction Costs Associated with Interconnection Agreements**." It allows carriers to port an effective interconnection agreement ("ICA") to which AT&T is a party in any state in AT&T's 22-state ILEC operating territory to any other state in that territory, subject to certain limitations. In essence, this merger commitment is an inter-state extension of Section 252(i) of the federal Telecommunications Act of 1996 ("1996 Act"), which operates only

[2] *In the Matter of AT&T Inc. and BellSouth Corp., Application for Transfer of Control*, FCC 06-189, 22 FCC Rcd. 5662 (rel. Mar. 26, 2007) ("FCC Merger Order"), Appendix F.

in-state,[3] with a built-in recognition that the requested ICA will include provisions that must be modified for the applicable state in light of state-specific considerations. Merger Commitment 7.1 provides:

> The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, *subject to state-specific pricing and performance plans and technical feasibility and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made*. (Emphasis added.)

Q. BASED ON THE LANGUAGE IN APPENDIX F, WHAT IS THE PURPOSE OF MERGER COMMITMENT 7.1?

A. As I stated, Merger Commitment 7.1 is in the category of commitments entitled, "**Reducing Transaction Costs Associated with Interconnection Agreements**." Based on that, the evident purpose of Merger Commitment 7.1 is to enable requesting carriers to save the transaction costs associated with negotiating and arbitrating interconnection agreements under Section 252 of the 1996 Act. Unlike some of the other merger commitments (for example, those concerning Special Access and ADSL service), the purpose of Merger Commitment 7.1 – at least on the face of it – is not to provide substantive advantages to the requesting carrier that would otherwise be unavailable.

[3] Section 252(i) provides, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). Although Section 252(i) speaks in terms of making available "any interconnection, service, or network element," the FCC has ruled that a requesting carrier that seeks to make an adoption under Section 252(i) may not adopt part of an interconnection agreement, but instead must make an adoption on an "all or nothing" basis. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (rel. July 13, 2004).

And, certainly, the purpose is not, as I further discuss below, to enable requesting carriers to accomplish arbitrage.

Q. WHAT DO YOU MEAN WHEN YOU REFER TO "PORTING" AN ICA?

A. The term "port" does not appear in the merger commitment. The term is commonly used, however, to refer to the process whereby AT&T and a requesting carrier take an effective agreement from State A (the "port-from state") and enter into that agreement for State B (the "port-to state"), after the agreement has been modified (as delineated in the Merger Commitment) for State B.

Q. WHAT SORTS OF MODIFICATIONS ARE REQUIRED WHEN AN ICA IS PORTED FROM ONE STATE TO ANOTHER UNDER MERGER COMMITMENT 7.1?

A. As the "subject to" language of the merger commitment provides, the port is subject to state-specific pricing and performance plans, and must be technically feasible to implement in the port-to state. Further, the merger commitment does not obligate AT&T to provide any interconnection arrangement or unbundled network element unless it is feasible to provide, given the technical, network, and Operational Support System ("OSS") attributes and limitations in the port-to state and is consistent with the laws and regulatory requirements of the port-to state. In addition, certain administrative changes, such as the operating entity name, are essential for the agreement to be legally binding and operational in the port-to state. I will discuss these more fully below.

Q. HOW DOES A CARRIER REQUEST A PORT?

A. AT&T has established a process that allows requesting carriers to submit porting requests electronically via email. The forms for all merger commitment-related requests are found on AT&T's "CLEC Online" website (https://clec.att.com/clec/, under "Agreements"), as

well as on AT&T's "Prime Access" website (https://primeaccess.att.com/, from the home page). The direct link to the forms is https://clec.att.com/clec/shell.cfm?section=2621.

Q. AFTER AT&T RECEIVES A PORTING REQUEST, IS THE NEXT STEP FOR AT&T TO INFORM THE CARRIER OF THE MODIFICATIONS THAT MUST BE MADE TO THE REQUESTED ICA IN ORDER FOR IT TO BE PORTED TO THE PORT-TO STATE?

A. Not necessarily. I am not personally involved in that aspect of the process, but I am informed that in some instances, porting requests may be defective in one way or another, in which event AT&T brings the defect to the requesting carrier's attention. Assuming a complete and valid porting request, however, AT&T reviews the requested agreement to determine what modifications must be made, and informs the requesting carrier what those modifications are.

Q. HOW DOES AT&T INFORM THE REQUESTING CARRIER OF THE MODIFICATIONS THAT MUST BE MADE IN ORDER FOR AN AGREEMENT TO BE PORTED?

A. AT&T sends the requesting carrier a "redline" of the requested agreement showing the changes that must be made.

Q. WHAT IS AT&T GENERALLY SEEKING TO ACCOMPLISH WHEN IT REDLINES A REQUESTED ICA?

A. AT&T seeks to provide a complete contract that 1) comports with Merger Commitment 7.1; and 2) results in a workable agreement, by which I mean one that both parties will be able to implement, without breaches, in the port-to state immediately upon the agreement becoming effective.

Q. WHAT DO YOU MEAN BY "WITHOUT BREACHES"?

A. There may be provisions in the underlying agreement that one party or the other literally cannot comply with in the port-to state. Imagine, for example, a provision in a Texas agreement that required AT&T Texas to provide bills in a certain format – a format

which AT&T's billing system in Georgia cannot generate. If the Texas provision were ported to Georgia without change, AT&T would be in breach of the agreement immediately upon sending the first bill.

Q. HOW DOES AT&T DETERMINE THE CHANGES THAT MUST BE MADE?

A. AT&T has a porting team, which currently consists of seven full-time equivalent employees.[4] The porting team reviews the entire requested ICA, provision by provision, in order to ensure that every provision that must be modified in order for the agreement, as ported, to comply with Merger Commitment 7.1 is appropriately modified. When they perform this review, the members of the porting team consult, as necessary and appropriate, with product managers, attorneys with knowledge of the laws and regulatory requirements of the port-to state, and others. With limited exceptions that I describe below, all the redlined changes are intended to ensure the ICA conforms with Merger Commitment 7.1. In other words, state-specific pricing and performance measure plans are modified as appropriate; modifications are made as appropriate to ensure technical feasibility in the port-to state; and provisions governing interconnection arrangements and UNEs are modified as appropriate to ensure that the arrangement or UNE is feasible to provide, given the technical, network, and OSS attributes and limitations in the port-to state, and is consistent with the laws and regulatory requirements of that state.

Q. IS AT&T ABLE TO TAKE A COOKIE-CUTTER APPROACH TO PORTING REQUESTS?

A. No. Each porting request is unique, because it involves adapting a specific ICA from State A for State B. With hundreds of effective ICAs in the 22-state region, there are

[4] AT&T recently augmented the team in order to accelerate the processing of porting requests.

thousands of possible permutations. It takes many, many hours to redline an ICA for porting.

Q. DOES AT&T BEGIN REDLINING AN ICA IMMEDIATELY AFTER RECEIVING A COMPLETE AND VALID PORTING REQUEST?

A. No. AT&T has received hundreds of porting requests, and it is AT&T's policy to process porting requests on a first-in, first-out ("FIFO") basis. FIFO ensures that each carrier gets a fair and equal opportunity to take advantage of the Merger Commitment. Generally, the porting team is not sitting on idle waiting for the next request to process; more typically, there has been a backlog.[5]

Q. WHAT SORTS OF CONTRACT PROVISIONS TYPICALLY REQUIRE REDLINING?

A. Items that often require modification include the following:

- Each product and service in the ported ICA must have corresponding language that conforms with the **OSS attributes and limitations** in the port-to state. OSS includes all things related to pre-order, ordering, provisioning, maintenance and billing for the products and services in the agreement. AT&T's goal is for the parties to successfully function under the terms of the agreement in the port-to state. Thus AT&T identifies any gaps or hindrances in the contract language that relates to OSS, and provides alternative language that will ensure that the agreement is operational in the port-to state.
    - OSS systems/processes are compatible only within the AT&T Southeast (legacy BellSouth) region, or within the legacy SBC 13-state region. Therefore, if the request is to port an ICA from one region to the other, much OSS language in the ported agreement must be replaced with the OSS language for the port-to region.
    - Additionally, if the port-to state cannot accommodate the same mechanized billing as the port-from state for a given product or service, AT&T will conform the agreement such that the products and services are compatible with the mechanized billing processes in the port-to state.

[5] AT&T made an exception for Sprint. As I explain below, Sprint filed its Complaint before AT&T had a chance to review and redline the Kentucky ICA Sprint asked to port. In light of that, and the accelerated schedule for this proceeding, AT&T jumped Sprint to the head of the line and prepared Sprint's redline before other carriers' whose requests should have been processed first.

- **Performance Measures** ("PMs") and the accompanying business rules are generally state-specific. Accordingly, the PM and business rule language in the ported ICA is typically replaced with the PM and business rule language of the port-to state.

- Terms and conditions that conflict with the **law or regulatory requirements of the port-to state**, as reflected, for example, in the state commission's rulings, must be replaced with language consistent with the applicable ruling or requirement.

    - For example, many state commissions issued rulings interpreting and implementing the FCC's Triennial Review Order ("TRO") and Triennial Review Remand Order ("TRRO"), and those rulings were not necessarily consistent from state to state. In instances where they were inconsistent, language reflecting the port-from state's TRO/TRRO rulings must be replaced with language that is consistent with the rulings of the port-to state.

- **Rates and pricing are state specific**; therefore, pricing from the port-from state must be replaced with pricing from the port-to state.

- **Network attributes and limitations,** such as switch translations, differ from state to state and must be reflected in the agreement.

Q. ALL THE MODIFICATIONS YOU JUST DISCUSSED ARE EXPLICITLY CONTEMPLATED BY MERGER COMMITMENT 7.1. YOU INDICATED EARLIER, HOWEVER, THAT AT&T REDLINES SOME ITEMS FOR REASONS THAT ARE NOT EXPLICITLY CONTEMPLATED BY THE MERGER COMMITMENT. PLEASE EXPLAIN.

A. AT&T carefully reviews all the ICA language, not only for the important substantive matters identified in Merger Commitment 7.1, but also for less substantive, but still essential, changes that must be made in order for the ported ICA to be workable in the sense I described above. For example, the names of the parties to the ICA must be changed; the names of various billing, tracking or account management systems that vary from region to region (or state to state) must be changed; the names and acronyms of various product offerings must be changed if they vary from region to region (or state to state); and references to tariffs in the port-from state must be changed to references to tariffs in the port-to state (unless there is no such tariff in the port-to state).

Q. WHEN AT&T REDLINES AN INTERCONNECTION AGREEMENT FOR A PORT, DOES IT MAKE ONLY THOSE CHANGES THAT WORK TO AT&T'S ADVANTAGE?

A. Absolutely not. It is AT&T's policy to apply the limitations in Merger Commitment 7.1 in a consistent way. In fact, in Section X of this testimony, I explain that in light of a ruling that this Commission made in a 2004 arbitration, AT&T deleted a provision in the Kentucky ICA that requires Sprint to pay AT&T Kentucky access charges on certain traffic, and replaced it with language that requires Sprint to pay AT&T Illinois nothing. This change obviously benefits Sprint and works to AT&T Illinois' economic detriment, but AT&T made the change nonetheless because the merger commitment requires it.

IV. SPRINT'S PORTING REQUEST

Q. WHEN DID SPRINT ASK TO PORT THE KENTUCKY ICA TO ILLINOIS?

A. According to the Complaint, Sprint sent AT&T a letter on November 20, 2007, indicating that certain Sprint entities wished to port the Kentucky ICA to certain states, including Illinois. Specifically, Sprint's letter, which is attached to Sprint's Complaint as Exhibit I, requested the port for all of the states in the legacy AT&T 13-state ILEC region except Ohio, for which Sprint had previously submitted a porting request.

Q. DID AT&T RESPOND TO SPRINT'S REQUEST?

A. Yes, it did. On December 13, 2007, AT&T responded to Sprint's letter of November 20 by explaining that Merger Commitment 7.1 would permit the Kentucky ICA to be ported jointly by one Competitive Local Exchange Carrier ("CLEC") and one Commercial Mobile Radio Service ("CMRS") provider, but not by a consortium consisting of one CLEC and multiple CMRS providers. This is because the Kentucky ICA – as I further explain below – is an arrangement between an ILEC and one CLEC and one CMRS provider. In order for the ICA to remain the same contract (subject only to state-specific

modifications contemplated by the Merger Commitment), it must remain an arrangement between an ILEC and one CLEC and one CMRS provider. Accordingly, AT&T's response (Exhibit K to Sprint's Complaint) stated that once Sprint informed AT&T which of the Sprint CMRS providers was to be a party to the agreement, AT&T would process the porting request by Sprint CLEC and the designated CMRS provider.

Q. DID SPRINT EVER IDENTIFY ONE CMRS PROVIDER FOR PURPOSES OF INCLUSION IN THE PORTED ICA?

A. No, it did not. Instead, on December 28, 2007 – just a little over a month after its November 20 request – Sprint filed its complaint in this Docket.

Q. DID SPRINT ALLOW TIME FOR AT&T TO PERFORM ITS REDLINE REVIEW OF THE KENTUCKY ICA PRIOR TO FILING ITS COMPLAINT?

A. No. In fact, AT&T did not even have a chance to start a methodical review of the Kentucky ICA before Sprint filed its Complaint.

Q. HAS AT&T SINCE SENT A REDLINE OF THE KENTUCKY ICA TO SPRINT?

A. Yes. Pursuant to an agreement the parties made in order to accommodate the schedule for this docket, AT&T sent Sprint a redline of Attachment 3 of the Kentucky ICA – which includes the contested bill and keep and facility price sharing provisions – on February 5, 2008. AT&T then sent completed redlines for the remainder of the Kentucky ICA to Sprint on February 12, 2008. These redlines, which address Sprint's request to port the Kentucky ICA not only to Illinois but also to the 12 other states in the legacy AT&T ILEC region, were prepared on an expedited basis. AT&T's cover letter, Exhibit JSM-1, stated that AT&T was "ready to discuss any issue Sprint may have with respect to this redline," and that while AT&T had "attempted to provide a thorough and complete document, . . . we are certainly open to discussing the reasons for the changes and making

adjustments where warranted." AT&T Illinois filed the redlines in this docket on March 24, 2008.

Q. DOES AT&T KNOW WHICH REDLINE ITEMS SPRINT OPPOSES?

A. Only to a limited extent. We know the parties disagree about the bill and keep and facility price sharing issues. Beyond that, though, AT&T has little information concerning where Sprint stands. Although Sprint and AT&T are engaged in the same process in all 13 state commissions in the legacy AT&T ILEC region, the schedule in Illinois is far in advance of the other states, and Sprint has not filed testimony or pleadings in any other state that sheds light on Sprint's positions on the most of the items AT&T has redlined. Sprint has provided a redline of its own that purportedly reflects Sprint's view of what the ported agreement should look like, but Sprint's redline is not helpful, because Sprint rejected out of hand practically all of AT&T's proposed modifications – including some that Sprint cannot be serious about.[6] In a general sense, Sprint has expressed the view that the redlining process should be simple and straightforward, and that AT&T has been overly zealous in its redlining, but that is not very informative either. The simple fact of the matter is that many changes must be made to the Kentucky ICA to make it suitable for approval in Illinois and, to a considerable extent, we do not know which of the changes AT&T has redlined are acceptable to Sprint and which are not.

[6] Merely by way of example, there are instances in which Sprint failed to strike references to BellSouth rate sheets, and in which Sprint retained references to the "Initial Wire Center List," which was BellSouth's Initial Wire Center List – obviously inapplicable in Illinois. My point here is not that Sprint is taking untenable positions – I do not believe that Sprint is actually taking the position that these inappropriate references should be retained – but rather is that Sprint did not prepare its redline in a way that informs AT&T what changes Sprint really believes must or must not be made to the Kentucky ICA.

Q. SINCE AT&T SENT SPRINT THE REDLINE IN FEBRUARY, HAVE THE PARTIES ENGAGED IN BUSINESS-TO-BUSINESS DISCUSSIONS CONCERNING THE MODIFICATIONS AT&T IDENTIFIED IN THE REDLINE?

A. Yes. The parties' representatives have been meeting twice a week to discuss the redlines. Just last Friday, March 21, the parties finalized an agreement on Attachments 5 (Number Portability), 8 (Rights of Way, Conduits and Pole Attachments), 9 (Performance Measures), and 11 (Disaster Recovery). In addition, the parties resolved all but two items in Attachment 6 (Ordering and Provisioning), and all but one item in Attachment 6a (OSS – Resale and Network Elements). However, the parties have not yet discussed the entire ICA. As of the date of this testimony, March 25, 2008, AT&T has no idea where Sprint stands on many redlined items in the ICA.

Q. DOES THE REDLINE AT&T FILED IN THIS PROCEEDING ON MARCH 24 REFLECT THE PARTIES' RECENT RESOLUTIONS OF THE ITEMS YOU IDENTIFIED IN YOUR LAST ANSWER?

A. No, it does not. The redline AT&T filed is identical to the one it transmitted to Sprint on February 5 and 12. Thus, it shows redlining – which amounts to potential disagreements – in the attachments identified above even though those redlined items have been resolved.

V. THE KENTUCKY ICA

Q. WHAT IS THE ORIGIN OF THE KENTUCKY ICA?

A. The Kentucky ICA is the Kentucky version of a nine-state agreement that was entered in 2001 between BellSouth (now AT&T), Sprint's CLEC operations ("Sprint CLEC"), and Sprint's wireless operations ("Sprint PCS") to govern the three parties' relations in the nine southeastern states in the former BellSouth ILEC region. That nine-state agreement reflected considerations that pertained to the three parties across all nine states. While

much of the nine-state agreement was negotiated, the agreement includes some provisions, applicable only to certain states, that were arbitrated in those states. The Kentucky ICA became available for porting under Merger Commitment 7.1 on November 7, 2007, when the Kentucky Public Service commission approved an extension of the Kentucky version of the nine-state agreement. While contained within a single ICA, some of the provisions apply only to the BellSouth/Sprint CLEC wireline relationship, while others apply only the BellSouth/Sprint PCS wireless relationship.

Q. HOW IS THE KENTUCKY ICA LAID OUT?

A. The ICA is comprised of three basic parts. The first, General Terms and Conditions, contains two subparts: "Part A" contains basic provisions under which the parties operate, such as term and termination, ordering procedures, audits, dispute resolution, branding and filing of the agreement with regulatory authorities. "Part B" of the General Terms and Conditions contains defined terms for use within the agreement.

The second basic part of the ICA includes the various ICA Attachments, which provide the terms and conditions for specific products and services provided under the ICA. The Kentucky ICA contains 11 attachments. Exhibit JSM-2 shows the table of contents for the ICA, including a listing of items covered in the General Terms and Conditions, as well as a listing of the individual attachments to the ICA.

The third part of the ICA is the various amendments to the ICA which the parties to the Kentucky ICA have negotiated.

Q. PLEASE DESCRIBE THE REDLINED VERSION OF THE DOCUMENT THAT RESULTED FROM AT&T'S REVIEW OF THE KENTUCKY ICA FOR COMPLIANCE WITH MERGER COMMITMENT 7.1.

A. All told, the Kentucky ICA is approximately 1169 pages long. AT&T's porting team reviewed the entire document, as I previously described, for changes that must be made

in order to port the ICA to all 13 states in the legacy AT&T ILEC region. Generally, the redline displays the required changes by showing with strike-through (~~like this~~) language that must be deleted from the Kentucky ICA and showing with underscore (<u>like this</u>) language that must be added to the Kentucky ICA. Because the redlines encompass all 13 states, some of the redlined language does not pertain to Illinois – and that is apparent on the face of the language (which may say, for example, "In Ohio, ..."). In fact, the redline includes entire attachments that do not pertain to Illinois. For example, there is an Attachment 12 (BCR) that pertains only to Texas. This Commission will have no occasion to consider the redlined language, or the attachments, that do not pertain to Illinois.

The General Terms and Conditions and most of the attachments and amendments show some redlining that indicates changes that must be made in order to port the Kentucky ICA to Illinois. There are some exceptions, however. First, AT&T's review of Attachment 10 (Agreement Implementation Template) and Amendments 2, 5 and 6 determined that those portions of the Kentucky ICA could be ported to Illinois as is, with no modifications. Consequently, there is no redlining on those portions of the ICA. Second, as AT&T witness Deborah Fuentes Niziolek explains, AT&T's review of Attachment 4 (Physical Collocation) determined that so many modifications needed to be made that it would have been practically impossible to produce a workable document; consequently, AT&T substituted its standard collocation appendix for Illinois. In addition, because performance measures and prices are state-specific, AT&T substituted for Kentucky ICA Attachment 9 (Performance Measures) a performance measures

attachment that is appropriate to Illinois, and also substituted Illinois pricing schedules for Kentucky pricing schedules.

VI. MATRIX OF CHANGES

Q. HAS AT&T PREPARED AN EXHIBIT DOCUMENT THAT ENUMERATES ALL OF THE REDLINED CHANGES?

A. Yes, AT&T has prepared an exhibit, attached hereto as Exhibit JSM-3, that is is a matrix of the changes AT&T has redlined into the Sprint Kentucky ICA. The matrix includes separate tabs for General Terms and Conditions, each Attachment, and each amendment to the ICA. The matrix identifies the sections of contract language that have been modified; describes the modifications; and provides an abbreviated statement of the reason each modification was made. In most instances, the reason coincides with one of the limitations enumerated in Merger Commitment 7.1 – that is, subject to state-specific pricing and performance plans; network or OSS attributes and limitations, technical feasibility; or the laws or regulatory requirements of the state of Illinois. In some instances, the reason is practical necessity of the sort I described above at lines 236-249.

Q. PLEASE IDENTIFY THE OTHER WITNESSES WHO WILL BE TESTIFYING ON BEHALF OF AT&T ILLINOIS, AND THE AREAS EACH WILL BE COVERING.

A. As I mentioned earlier, I will testify on the bill and keep and facility price sharing provisions, and about additional matters that relate to Attachment 3 (Local Interconnection). Lance McNeil will testify about OSS issues. Jason Constable focuses on network issues relating to Resale, Interconnection, and Collocation, and on SS7, 911 and General Terms and Conditions. Chris Read covers necessary changes to ICA language regarding recording and billing of intercarrier traffic. And Deb Fuentes Niziolek discusses policy and product matters related to the TRO/TRRO, Unbundled

Network Elements (UNEs), Collocation, General Terms and Conditions and other Call Related Services.

VII. BILL AND KEEP

Q. WHAT IS "BILL AND KEEP"?

A. It is an arrangement pursuant to which two carriers pay each other a price of zero for transporting and terminating each other's telecommunications traffic.

Q. WHEN IS RECIPROCAL COMPENSATION DUE BETWEEN CARRIERS?

A. Reciprocal compensation is due when one carrier completes calls to its end user customers that are originated by another carrier's end user customers. Reciprocal compensation for wireline traffic involves calls originated and terminated within the same local calling area; that is, they are "local calls." Because the originating carrier's end user is the 'cost-causer' of the telephone call – and that carrier receives retail subscription fees from its end user customer – the originating carrier owes the terminating carrier compensation for completing the originating carrier's end user customer's call. Reciprocal compensation for CMRS traffic is similar, though the "local calling area" is the Major Trading Area ("MTA") where the call originates. If a CMRS call originates and terminates within the same MTA, that call is subject to reciprocal compensation.

Q. WHICH ATTACHMENT OF THE KENTUCKY ICA GOVERNS RECIPROCAL COMPENSATION?

A. Attachment 3 of the Kentucky ICA (Local Interconnection) sets forth the terms and conditions governing reciprocal compensation. This attachment contains provisions for the classification of various traffic types, the appropriate compensation treatment for

those traffic types, and the methods by which the parties bill each other for the different types of inter-carrier traffic subject to compensation.

Q. WHAT PROVISION IN THE KENTUCKY ICA INCLUDES THE BILL AND KEEP LANGUAGE?

A. Attachment 3 includes a section that provides for bill and keep on local wireline and wireless traffic. Specifically, BellSouth, Sprint CLEC and Sprint PCS agreed as follows in 2001 for Section 6.1 of Attachment 3:

> Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between BellSouth, Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided BellSouth a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.

Under that provision, AT&T Kentucky does not charge Sprint CLEC or Sprint PCS for transporting or terminating Sprint traffic that would otherwise be subject to reciprocal compensation, and Sprint CLEC and Sprint PCS do not charge AT&T Kentucky for transporting and terminating AT&T Kentucky traffic that would otherwise be subject to reciprocal compensation.

Q. WHAT IS AT&T ILLINOIS' POSITION WITH RESPECT TO SECTION 6.1?

A. Section 6.1 cannot be ported to Illinois pursuant to Merger Commitment 7.1, for several reasons. First, the bill and keep provision is a "state-specific pricing plan" within the meaning of the merger commitment. Second, if the provision were ported to Illinois, it would cost AT&T Illinois more to provide the resulting ICA to Sprint than it costs AT&T

Kentucky to provide the Kentucky ICA to Sprint CLEC and Sprint PCS in Kentucky, in violation of an applicable FCC rule. Third, as a policy matter, Sprint would enjoy an unwarranted economic windfall, at AT&T's expense and contrary to the intent of the merger commitment, if Sprint were allowed to port the Kentucky bill and keep provision to Illinois.

Q. PLEASE DISCUSS THE POLICY CONSIDERATIONS FIRST; WHEN IS BILL AND KEEP APPROPRIATE?

A. As a matter of simple common sense, a bill and keep arrangement for traffic that would otherwise be subject to reciprocal compensation is appropriate only when the amounts of traffic that each party is transporting and terminating for the other are approximately equal, so that the reciprocal charges, if billed and paid, would approximately cancel each other out. The FCC's *Local Competition Order* contains substantial discussion of bill and keep, and concludes that bill and keep is a reasonable approach to reciprocal compensation only when it is economically efficient for both parties.[7]

Because of the very nature of bill and keep (that neither party bills the other for the termination of inter-carrier traffic), the FCC recognized that it makes sense to limit its applicability to those situations in which the traffic between the two parties is roughly balanced (*i.e.*, each party terminates approximately the same amount of local traffic for the other party). Otherwise, bill and keep would result in non-economic subsidies of the carrier originating more traffic and could encourage attempts to take advantage of regulatory arbitrage.

[7] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325 (rel. Aug. 8, 1996) ("*Local Competition Order*"), ¶ 1112.

Q. UNDER THE FCC'S RULES, CAN A STATE COMMISSION ORDER BILL AND KEEP FOR TRAFFIC THAT WOULD OTHERWISE BE SUBJECT TO RECIPROCAL COMPENSATION?

A. Yes, but only when the parties' traffic is roughly balanced. 47 C.F.R. § 51.713(b) provides:

> A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b) . . . .[8]

Clearly, the FCC envisioned bill and keep as a legitimate option for the pricing of reciprocal compensation, but only when it makes economic sense, *i.e.*, when the parties' traffic is roughly balanced, so that the arrangement gives neither party an economic advantage or disadvantage.

Q. HAS THE ILLINOIS COMMERCE COMMISSION RECOGNIZED THAT BILL AND KEEP IS APPROPRIATE ONLY WHEN TRAFFIC IS ROUGHLY BALANCED?

A. Yes. In a 2006 arbitration decision, the Commission stated that the "FCC's rules regarding bill and keep establish limited circumstances in which a state Commission may impose this outcome"; quoted the FCC Rule I quoted above; and concluded, "In the present cases, all parties agree that the traffic . . . is not roughly balanced. Therefore, the Commission would only consider bill and keep as a means of setting the reciprocal compensation rate in this arbitration as a last resort."[9]

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[8] Section 51.711(b) concerns symmetrical reciprocal compensation, and is not germane here.

[9] Arbitration Decision, *Hamilton County Tel. Co-Op et al. Petitions for Arbitration under the Telecommunications Act to Establish Terms and Conditions for Reciprocal Compensation with Verizon Wireless and its Constituent Companies*, Docket Nos. 05-0644 *et al*. (Ill. Comm. Comm'n Jan. 25, 2006), at 15. In light of this decision, the bill and keep provision in the Kentucky ICA is inconsistent with Illinois law – unless the parties' traffic is roughly balanced, which, as I discuss below, it is not.

Q. AS A MATTER OF POLICY, WHY WOULD IT BE UNDESIRABLE TO MANDATE BILL AND KEEP WHEN THE PARTIES' TRAFFIC IS NOT ROUGHLY BALANCED?

A. Because it would encourage arbitrage and uneconomic behavior. As the FCC recognized in its *ISP Remand Order*,[10] as well as in an accompanying Notice of Proposed Rulemaking on intercarrier compensation,[11] carriers have an incentive to reduce their operating costs by seeking to have those costs covered by others. In its *ISP Remand Order*, the FCC observed, with respect to ISP-bound traffic, "that the existing inter-carrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets."[12] In discussing the need for a unified inter-carrier compensation regime, the FCC further stated, "In the *NPRM*, we suggest that, given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus carriers have every incentive to compete, not on the basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses."[13]

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[10] Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001)) ("*ISP Remand Order*"), which was remanded but not vacated in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

[11] Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610 (rel. April 27, 2001) ("*NPRM*").

[12] *ISP Remand Order* ¶ 2.

[13] *Id.* ¶ 4.

While the focus of the discussion in the *ISP Remand Order* and the *NPRM* is the appropriate treatment of ISP-bound traffic, the FCC's observations concerning market distortions are applicable here with regard to any carrier's attempt to apply bill and keep in a manner inconsistent with the FCC's rules.

Q. DOESN'T THE *NPRM* YOU REFER TO DISCUSS THE FCC'S DESIRE TO PURSUE BILL AND KEEP FOR INTER-CARRIER COMPENSATION?

A. Yes, it does. And indeed, AT&T has supported bill and keep in the FCC's intercarrier compensation docket, as a way to eliminate arbitrage *as part of a comprehensive program of reform that ensures that carriers will recover their costs*. There is a critically important distinction, though, between what the FCC seeks to do in the future, and what AT&T advocates for the future as part of a comprehensive program of reform, versus the *current* reciprocal compensation regime under which all carriers must operate *today*. If Sprint were allowed to apply bill and keep today for all of its traffic that would otherwise be subject to reciprocal compensation, it would gain an unfair competitive advantage with respect to all other carriers that exchange traffic that is *not* roughly in balance with other providers. If and when the FCC determines that traffic should be exchanged under a bill and keep regime, the FCC will likely implement a transition period, as well as issue guidelines to ensure that all carriers transition in a similar manner at the same time, in order to prevent any carrier from gaining an unfair advantage over its competitors. To allow just one carrier to implement a unique regime – bill and keep for its local traffic regardless of currently established balance-of-traffic guidelines – would be to allow that carrier to operate on an uneven playing field with respect to its competitors.

Q. WOULD THE PORTING OF THE KENTUCKY BILL AND KEEP ARRANGEMENT TO ILLINOIS RESULT IN AN UNFAIR ADVANTAGE FOR SPRINT?

A. Yes, it would. Based upon recent traffic studies conducted by AT&T, Sprint currently sends more local wireline and local wireless traffic to AT&T Illinois than AT&T Illinois sends to Sprint. This imbalance is for all of the Sprint entities collectively, and – if the bill and keep provision in the Kentucky ICA could be ported to Illinois – would give Sprint a free ride on AT&T's network for every minute of traffic that AT&T Illinois terminates for Sprint that is in excess of the minutes of traffic that Sprint terminates for AT&T Illinois.

Q. PLEASE DESCRIBE AT&T'S TRAFFIC STUDY.

A. The study looked at all originating and terminating local traffic exchanged between the Sprint entities, including Nextel affiliates, and AT&T Illinois. The study looked at monthly traffic levels, on a Minute of Use ("MOU") basis, from January 2007 through December 2007. The study did not include long distance traffic, nor did it include any transit traffic originated by Sprint or terminated to Sprint. Rather, the study focused solely on Section 251(b)(5) (local) traffic exchanged only between the parties.

Q. CAN YOU QUANTIFY THE FINANCIAL IMPACT IF SPRINT WERE ALLOWED TO APPLY BILL AND KEEP TO THIS IMBALANCED TRAFFIC?

A. Yes. Exhibit JSM-4 shows the results of AT&T's traffic study for Illinois. As you can see on the exhibit, of the total reciprocal compensation-eligible traffic that AT&T Illinois and Sprint exchange, Sprint originates *****START CONFIDENTIAL*** ***END CONFIDENTIAL***** and AT&T Illinois originates *****START CONFIDENTIAL*** *** END CONFIDENTIAL***.** As a result of that imbalance, the annual financial impact if Sprint were allowed to apply bill and keep to

the local traffic it exchanges with AT&T Illinois would be, as also shown on that exhibit, slightly more than *****START CONFIDENTIAL***** $ ***** END CONFIDENTIAL***.** (In the top table on the exhibit, see the cell showing Bill and Keep/All Sprint Entities.) That means that AT&T would incur about *****START CONFIDENTIAL***** $ ***** END CONFIDENTIAL***** each year in costs to terminate Sprint's *additional, out of balance* local traffic in Illinois, and Sprint would not have to reimburse AT&T for the use of its network in the transport and termination of this traffic.

Q. SO IS AT&T OPPOSING SPRINT'S REQUEST TO PORT THE BILL AND KEEP PROVISIONS SIMPLY OVER THAT AMOUNT?

A. No, there's much more to it than that. Sprint is seeking the same bill and keep arrangement in all 13 states in the legacy AT&T ILEC region. AT&T's study shows that, if Sprint were to prevail in its efforts to apply bill and keep in AT&T's legacy 13 state territory, AT&T's losses in cost-recovery for the termination of that out of balance traffic would exceed *****START CONFIDENTIAL***** $ ***** END CONFIDENTIAL***** per year. This is reflected on Exhibit JSM-5, which shows the results of AT&T's study in the aggregate across the 13-state legacy AT&T ILEC region. In addition, one would expect other carriers to try and follow Sprint's lead; all would seek to benefit in the same manner – that is, by not having to pay AT&T terminating costs for local traffic. Thus, the financial impact vis-à-vis Sprint could be just the tip of the iceberg.

Q. IS THERE ANY REASON TO BELIEVE THAT SPRINT IS INTENTIONALLY TRYING TO TAKE ADVANTAGE OF MERGER COMMITMENT 7.1 IN ORDER TO ACHIEVE THE ARBITRAGE YOU HAVE DESCRIBED?

A. Yes. The circumstances surrounding Sprint's invocation of the merger commitment suggest that Sprint's purpose was not to reduce its transaction costs related to negotiating an interconnection agreement – and recall that that is the purpose of the merger commitment – but instead was to gain a substantive economic advantage that has nothing to do with reducing transaction costs.

Q. WHAT WERE THE CIRCUMSTANCES?

A. In 2004, Sprint and BellSouth started to negotiate replacement interconnection agreements for the nine former BellSouth states – *i.e.*, replacements for the Kentucky ICA and its counterparts in the other eight BellSouth states. As of late December, 2006, Sprint and AT&T, after two and a half years of intensive negotiation – negotiations that occupied thousands of hours of time of the parties' CLEC and CMRS negotiators, lawyers and subject matter experts – had reached an agreement in principle. While a few side issues remained, contract execution was anticipated in a matter of weeks, and the parties agreed they had achieved a milestone.

On January 25, 2007, however, Sprint repudiated the agreement the parties had reached and told AT&T it had to offer a "sweeter deal" if it wanted a negotiated agreement. What precipitated this reversal? The recently announced merger commitments, which Sprint told AT&T gave Sprint "leverage."

Evidently, then, Sprint did not invoke the merger commitments in order to reduce its transaction costs. On the contrary, Sprint walked away from the substantial transaction costs it had already incurred and abandoned a negotiated agreement that would have avoided arbitration in order to try to avail itself of the leverage it claimed to

have found in the merger commitments – an undertaking that has dramatically increased both parties' transaction costs.

Q. WERE YOU INVOLVED IS THE DEALINGS BETWEEN SPRINT AND AT&T THAT YOU JUST DESCRIBED?

A. I was not. However, the information in my last answer was provided to me by an AT&T employee who was at the center of the parties' negotiations, and who has notes that show that Sprint's representative specifically told her the merger commitments gave Sprint "leverage" and that AT&T needed to offer Sprint a "sweeter" deal if it wanted a negotiated agreement.

Q. YOU'VE TESTIFIED AT SOME LENGTH ABOUT THE POLICY REASONS FOR NOT ALLOWING SPRINT TO PORT THE KENTUCKY BILL AND KEEP PROVISION TO ILLINOIS. YOU ALSO SAID, THOUGH, THAT THE PROVISION CANNOT BE PORTED BECAUSE IT IS A "STATE-SPECIFIC PRICING PLAN" WITHIN THE MEANING OF MERGER COMMITMENT 7.1. BUT IS BILL AND KEEP REALLY A PRICING PLAN?

A. Certainly it is. It sets a price – zero – for the transport and termination of traffic by each party. Indeed, the 1996 Act classifies bill and keep arrangements as a form of pricing plan, as one of the "*Pricing* Standards" governed by Section 252(d). 47 U.S.C. § 252(d) (emphasis added). Subsection (2) of that Section addresses "*Charges* for transport and termination of traffic."[14] Subsection 252(d)(2)(A)(i) provides that such charges are to "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[15] Subsection 252(d)(2)(B)(i) then adds that the general provisions regarding reciprocal compensation charges do not preclude

[14] *Id*. at § 252(d)(2) (emphasis added).

[15] *Id*. at § 252(d)(2)(A)(i).

"arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations," a category that "include[es] arrangements that waive mutual recovery (*such as bill-and-keep arrangements*)."[16] Thus, the 1996 Act recognizes that bill and keep is simply one method to address "charges" for the "recovery of costs," just like any other pricing plan governed by the Act's "Pricing Standards."

Q. HAS THE FCC SAID ANYTHING THAT INDICATES THAT IT SEES BILL AND KEEP AS PRICING?

A. Yes. The FCC's *Local Competition Order* discusses at length how states may price for transport and termination of Section 251(b)(5) traffic (*i.e.*, traffic subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act). The FCC's discussion concludes with this:

> **(2) Pricing Rule**
>
> **States have three options for establishing transport and termination rate levels.** A state commission may conduct a thorough review of economic studies prepared using the TELRIC-based methodology . . . . Alternatively, the state may adopt a default price pursuant to the default proxies outlined below. . . . **As a third alternative, in some circumstances states may order a "bill and keep" arrangement, as discussed below.**[17]

Thus, the FCC sees bill and keep as one of three options for establishing rate levels. In other words, it is a price.

Q. HAS THE ILLINOIS COMMERCE COMMISSION EVER SAID ANYTHING THAT INDICATES IT SEES BILL AND KEEP AS PRICING?

A. Yes. In the 2006 arbitration decision I quoted above, at lines 508-513, the Commission, like the FCC in the language I just quoted, referred to "bill and keep as a means of setting the reciprocal compensation rate."

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[16] *Id*. at § 252(d)(2)(B)(i) (emphasis added).

[17] *Local Competition Order* ¶ 1055 (emphasis added, footnote omitted).

Q. EVEN IF THE BILL AND KEEP PROVISION IS A PRICING PLAN, WHAT MAKES IT A "STATE-SPECIFIC" PRICING PLAN?

A. First, the reciprocal compensation provisions in the 1996 Act and the FCC's rules show that bill and keep is inherently a state-specific pricing plan. The 1996 Act requires that reciprocal compensation arrangements "provide for the mutual and reciprocal recovery" of costs "by *each* carrier" and it contemplates bill and keep only as an arrangement to "afford the *mutual* recovery of costs through the *offsetting* of *reciprocal* obligations."[18] The Act thus prevents a requesting carrier (or a state commission) from forcing an incumbent LEC to participate in a highly unbalanced exchange of traffic where it does not recover its costs and where the parties' obligations are neither truly "reciprocal" nor "offsetting." Likewise, the FCC's rules implementing the 1996 Act limit the imposition of bill and keep to the context where "the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so."[19] Because a state may require bill-and-keep only for traffic that is roughly balanced, bill-and-keep is *necessarily* a state-specific pricing arrangement. Traffic that is balanced in one state may not be balanced in another. It is up to each state to weigh the evidence.

Second, the language of the bill and keep provision in the Kentucky ICA shows that the bill and keep arrangement was based on particular circumstances that pertained in 2001 in Kentucky – circumstances that do not pertain in Illinois today. Again, Section 6.1 provides:

[18] 47 U.S.C. § 252(d)(2)(A)(i), (B)(1) (emphasis added).

[19] 47 C.F.R. § 51.713(b).

> Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between BellSouth, Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided BellSouth a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.

The parties have differing views on the precise circumstances surrounding BellSouth's agreement to bill and keep with Sprint CLEC and Sprint PCS in 2001, so I will not characterize or interpret the language in Section 6.1. It is obvious, though, from the references to bill and keep being "based upon extensive evaluation of costs incurred by each party for the termination of traffic" and to Sprint PCS having "provided BellSouth a substantial cost study," and from the fact that BellSouth could terminate the bill and keep arrangement if either Sprint entity opted out of the bill and keep arrangement, that this was an arrangement for a particular time and place.

Q. WAS THE TRAFFIC THAT BELLSOUTH AND SPRINT AGREED TO EXCHANGE ON A BILL AND KEEP BASIS IN 2001 ROUGHLY BALANCED?

A. It appears that it was. Exhibit JSM-6 is a contemporaneous internal BellSouth document that summarized the parties' agreement. It says, **Billing between BST and Sprint entities was balanced, each gave up billing the other ***START CONFIDENTIAL *** *** END CONFIDENTIAL *** annually."**

Q. SO TRAFFIC BALANCE WAS A CONSIDERATION FOR BELLSOUTH?

A. It had to be: No rational company would agree to bill and keep without considering the economic impact, and the economic impact depends on the extent to which the parties'

traffic is balanced. This underscores that what Sprint is now proposing is arbitrage, because where Sprint's and AT&T Illinois' traffic is *not* balanced, Sprint would be getting a free ride while AT&T picks up the tab.

Q. STILL ON THE SUBJECT OF WHETHER THE BILL AND KEEP PROVISION IS STATE-SPECIFIC, ISN'T IT TRUE THAT THE PROVISION WAS NEGOTIATED FOR ALL NINE STATES IN THE FORMER BELLSOUTH REGION, AND NOT JUST FOR KENTUCKY?

A. That is correct, and Sprint has argued on that basis that the provision is not "state-specific." That strikes me as a red herring. The fact that the bill and keep provision was negotiated for multiple states may well mean the provision was not state-*unique*, but it does not mean it was not state-*specific*. As an initial matter, those pricing arrangements have been incorporated into individual state interconnection agreements that were separately submitted to, reviewed by, and approved by individual states. Indeed, it is an individual state agreement – the Kentucky ICA – that Sprint seeks to port. Consequently, the pricing provisions at issue cannot be viewed as anything other than state-specific. It does not matter that the pricing terms in the Kentucky ICA and the other eight BellSouth agreements reflect considerations both within and outside of Kentucky. The principle underlying the pricing carve-out in Merger Commitment 7.1 – that a price that makes economic sense in one state may not make sense in certain others – applies with just as much force to pricing that is intended for a specific group of states as it does to pricing that is unique to a single state. And the fact that a price made economic sense in multiple states served by BellSouth ILECs in 2001 does not mean it makes sense in Illinois today.

Q. WHAT WOULD BE THE CONSEQUENCE IF SPRINT'S VIEW THAT "STATE-SPECIFIC PRICING" SHOULD BE REDEFINED AS "STATE-UNIQUE PRICING" WERE TO PREVAIL?

A. It would discourage AT&T from the efficient practice of negotiating agreements for multiple states at once. For under Sprint's view, the pricing plans in those agreements could then be ported to other states where they would be uneconomic. Sprint's approach would discourage negotiations at any level other than on a grueling state by state by state basis.

Q. AT THE BEGINNING OF YOUR TESTIMONY ON BILL AND KEEP, YOU SAID THAT AN ADDITIONAL REASON FOR DISALLOWING THE PORT IS THAT IF THE BILL AND KEEP PROVISION WERE PORTED TO ILLINOIS, IT WOULD COST AT&T ILLINOIS MORE TO PROVIDE THE RESULTING ICA TO SPRINT THAN IT COSTS AT&T KENTUCKY TO PROVIDE THE KENTUCKY ICA TO SPRINT CLEC AND SPRINT PCS IN KENTUCKY, IN VIOLATION OF AN APPLICABLE FCC RULE. PLEASE EXPLAIN.

A. The starting point is Section 252(i) of the 1996 Act, which requires incumbent LECs to make available to any requesting carrier any interconnection agreement to which it is a party.[20] The FCC has ruled that that obligation

> shall not apply where the incumbent LEC proves to the state commission that . . . [t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.

47 C.F.R. § 51.809(b). The rationale of Rule 809(b) is obvious: A provision that generally allows requesting carriers to adopt an existing agreement, rather than negotiating and arbitrating an agreement of their own, cannot properly be applied to contracts that, if adopted, would impose costs on the ILEC in excess of the costs the ILEC incurs to perform the original agreement.

[20] *See n.* 3 above.

Q. HOW DOES THAT APPLY HERE?

A. If Sprint were allowed to port the Kentucky bill and keep provision to Illinois, it would cost more for AT&T Illinois to provide the ICA to Sprint than it costs AT&T Kentucky to provide the ICA to Sprint CLEC and Sprint PCS in Kentucky. The differential is shown on Exhibit JSM-4. There, you can see that the bill and keep arrangement in Kentucky currently costs AT&T Kentucky approximately *****START CONFIDENTIAL***** $ *****END CONFIDENTIAL*****, while the same arrangement would cost AT&T Illinois *****START CONFIDENTIAL***** $ *****END CONFIDENTIAL*****.

Q. BUT FCC RULE 809(b) DOESN'T APPLY TO THE MERGER COMMITMENT, DOES IT?

A. It is true that Rule 809(b) was promulgated in connection with Section 252(i), and not in connection with the merger commitment. But it stands to reason that Merger Commitment 7.1 was not intended to nullify the limitation Rule 809(b) imposes on interconnection agreement adoptions. Indeed, to read the merger commitment otherwise would result in the absurd situation in which a carrier in Florida, for example, could port an interconnection agreement approved in Illinois even though a carrier in Illinois could not adopt the same Illinois agreement under Section 252(i). Alternatively, this reading could eviscerate Rule 809(b) altogether – even for in-state adoptions – by permitting carriers to end-run around that rule through a two-step process. For example, a carrier in Florida with an affiliate in Illinois could obtain a Florida agreement not available for adoption in Florida under Rule 809(b) by having its Illinois affiliate port the agreement from Florida and by then porting the agreement back to Florida, thereby accomplishing

through two steps what FCC rules prohibit it from accomplishing in one step. Merger Commitment 7.1 should not be read to allow such absurd results.

Q. CAN THIS COMMISSION EXTEND THE FCC'S RULE TO THE MERGER COMMITMENT?

A. AT&T Illinois is not asking the Commission to do anything to the FCC's Rule. It is merely a matter of applying the principle of that rule in the merger commitment context. And, in fact, AT&T has asked the FCC to declare that the principles of Rule 809(b) apply to the merger commitment, and AT&T Illinois asked this Commission to await the FCC's decision. If the Commission cannot do that, or is not willing to do that, it must do its best to anticipate what the FCC will do. As a matter of simple common sense, a carrier should not be allowed to port an interconnection agreement under Merger Commitment 7.1 that it would not be permitted to adopt under Section 252(i), and it is reasonable to expect the FCC to reach that conclusion. Accordingly, this Commission should do so as well.

Q. ASSUMING THE COMMISSION AGREES WITH AT&T THAT SECTION 6.1 OF ATTACHMENT 3 OF THE KENTUCKY ICA CANNOT BE PORTED TO ILLINOIS, WHAT WOULD BE SUBSTITUTED FOR SECTION 6.1?

A. In the redlined version of Attachment 3, AT&T has inserted standard Illinois reciprocal compensation provisions that address all pertinent aspects of reciprocal compensation. Those provisions appear as inserted Sections 6.1 through 6.15. If Sprint has any objections to those provisions – other than its objection that the bill and keep provision in the Kentucky ICA should be ported – I am not aware of them.[21]

[21] I separately discuss Section 6.15 below, at line 1130.

VIII. FACILITY PRICE SHARING

Q. WHAT IS THE "SHARED FACILITY FACTOR"?

A. As this Commission has recognized,[22] each party to an interconnection is financially responsible for the cost of delivering its originated local traffic to the Point of Interconnection ("POI") with the other carrier. Each party may elect to provision its own facilities and shoulder those costs as it incurs them; or the parties may agree to use the same facilities for the exchange of their traffic, and then apportion the costs based upon each party's use of the facilities. A "Shared Facility Factor" ("SFF") is used in some ICAs to allocate the costs of two-way multi-use Interconnection Facilities between AT&T and a wireless service provider, based on each carrier's proportionate use of the facility. The SFF is equal to the amount of Section 251(b)(5) traffic (*i.e.*, reciprocal compensation traffic) originated on AT&T's network in the state compared to the amount of all traffic exchanged between the parties over the interconnection facilities in the state.

Q. WHAT OTHER TYPES OF TRAFFIC TRAVERSE THE AT&T – SPRINT WIRELESS INTERCONNECTION FACILITIES IN ADDITION TO SECTION 251(b)(5) TRAFFIC?

A. In addition to the Section 251(b)(5) traffic that is originated by AT&T and sent to Sprint, there is traffic that AT&T hands off to Sprint that is not originated by AT&T. This traffic, called transit traffic, is originated by a third-party carrier whose end user customer desires to call a Sprint end user customer. If the third-party carrier and Sprint do not have a direct interconnection between them, AT&T can transport the third party carrier's traffic to Sprint over the AT&T/Sprint interconnection. Likewise, when Sprint originates

[22] *See* Arbitration Decision, Docket No. 04-0469, *MCI Metro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications, Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Tel. Co. Pursuant to Section 251(b)(5) of the Telecommunications Act of 1996* (Nov. 30, 2004) ("*MCI Arbitration Decision*"), at p. 79.

a call to a third-party carrier that is not directly interconnected with Sprint, AT&T will accept that traffic from Sprint and transport it to the terminating third-party carrier. Because this transit traffic is exchanged between Sprint and a third-party carrier, Sprint (and the third-party carrier) must work out the application of intercarrier compensation for those calls.

The interconnection facilities between AT&T and Sprint also carry interexchange carrier ("IXC") traffic terminating to Sprint as well as IXC traffic originated by Sprint handed to AT&T for delivery to an IXC. Just as with transit traffic, the financial relationship for intercarrier compensation on IXC-carried calls lies between Sprint and the IXC, not between Sprint and AT&T.

Q. WHY IS TRANSIT TRAFFIC NOT INCLUDED IN AT&T'S PORTION OF THE SHARED FACILITY FACTOR?

A. Because the traffic is of no benefit to AT&T, as AT&T's end users neither originate nor receive the calls. AT&T's transit service is a conduit for Sprint to send and receive traffic it exchanges *with other carriers.* Furthermore, Sprint has the ability to recover its termination costs directly from the originating carriers of such traffic via reciprocal compensation. As AT&T is not a cost-causer for transit traffic, AT&T is not obligated to pay for that portion of transit traffic that traverses the AT&T-Sprint interconnection facilities.

Q. WHAT ARE THE ACTUAL SHARED FACILITY FACTOR PROPORTIONS EXCHANGED BETWEEN AT&T AND THE SPRINT WIRELESS ENTITIES IN ILLINOIS?

A. In reviewing the data on Exhibit JSM-4 for calendar-year 2007, traffic between AT&T and the three wireless entities currently operating in Illinois is as follows: *****START CONFIDENTIAL *****

- Sprint PCS = AT&T =
- Nextel = AT&T =
- NPCR = AT&T = ***** END CONFIDENTIAL *****

These figures show the proportion of traffic for which each carrier is responsible for purposes of assigning facilities costs. As shown above, Sprint PCS is financially responsible for *****START CONFIDENTIAL *** *** END CONFIDENTIAL ***** of all traffic that traverses the Sprint PCS – AT&T interconnection facilities. As such, the Shared Facility Factor would be *****START CONFIDENTIAL *** *** END CONFIDENTIAL *****. Likewise, the individual Shared Facility Factors for Nextel and NPCR would reflect their appropriate financial responsibility for the cost of the interconnection facilities between those carriers and AT&T, respectively.

Q. WHAT TERMS OF THE KENTUCKY ICA GOVERN ALLOCATION OF THE PRICE OF INTERCONNECTION FACILITIES?

A. In the Kentucky ICA, the SFF is addressed in Attachment 3. Specifically, Section 2.3.2 of that Attachment states that "[t]he cost of the interconnection facilities between BellSouth and Sprint PCS switches within BellSouth's service area shall be shared on an equal basis." This means a Shared Facility Factor of 50/50 equates to a price for the facility, for each party, to be 50% of the total cost of that facility.

Q. WHAT IS AT&T'S POSITION CONCERNING SECTION 2.3.2?

A. Like Section 6.1, Section 2.3.2 cannot be ported to Illinois pursuant to Merger Commitment 7.1, and for the same basic reasons. First, it is a "state-specific pricing plan" within the meaning of the merger commitment. Second, if the provision were ported to Illinois, it would cost AT&T Illinois more to provide the resulting ICA to Sprint than it costs AT&T Kentucky to provide the Kentucky ICA to Sprint CLEC and Sprint

PCS in Kentucky, in violation of an applicable FCC rule. Third, as a policy matter, Sprint would enjoy an unwarranted economic windfall, at AT&T's expense and contrary to the intent of the merger commitment, if Sprint were allowed to port the facility price sharing provision to Illinois.

Q. PLEASE ELABORATE ON THE POLICY CONCERN.

A. The price sharing arrangement in the Kentucky ICA is not reflective of the true proportion of traffic for which each party is responsible in Illinois. If Sprint's use of shared facilities is approximately *****START CONFIDENTIAL *** ***END CONFIDENTIAL***** while AT&T Illinois' is approximately *****START CONFIDENTIAL *** *** END CONFIDENTIAL*****, it is obviously inequitable for Sprint to bear only 50% of the cost. Moreover, such a disconnect between cost-causation and cost-bearing will tend to promote uneconomic behavior – in this instance, over-use of the facilities by Sprint. Exhibit JSM-4 quantifies the inequity. With an inappropriate 50/50 sharing of the price of the facilities, Sprint would improperly enjoy an arbitrage benefit of *****START CONFIDENTIAL***** $ *****END CONFIDENTIAL***** at AT&T Illinois' expense.

Q. EXPLAIN YOUR STATEMENT THAT SECTION 2.3.2 IS A STATE-SPECIFIC PRICING PLAN.

A. A facility price sharing arrangement, no less than bill and keep, is state-specific pricing. The arrangement is, like bill and keep, a formula for determining the price each party pays for interconnection facilities. Indeed, it would be completely antithetical to the purpose of Merger Commitment 7.1 to treat facility pricing arrangements as anything other than state-specific pricing. Imposing a 50/50 price sharing arrangement for facilities that are not in fact shared 50/50 would necessarily yield economically irrational

and inefficient pricing. Surely Merger Commitment 7.1 was not intended to require such absurd results.

Q. ISN'T THE 50/50 PRICE SHARING ARRANGEMENT IN THE KENTUCKY ICA A RATIO RATHER THAN A "PRICE"?

A. In the case of wireless interconnection facilities, any distinction between ratio and a price is meaningless. In fact, the ratio dictates precisely how much each party must pay, and it is therefore tantamount to a price. The Merriam-Webster on-line dictionary defines a "price" as "the amount of money given or set as consideration for the sale of a specified thing."[23] In the case of wireless interconnection facilities, the SFF is simply a quantity that is part of the calculation of the total price charged for a carrier's use of that facility.

Q. PLEASE EXPLAIN YOUR EARLIER STATEMENT THAT IF SECTION 2.3.2 WERE PORTED TO ILLINOIS, IT WOULD COST AT&T ILLINOIS MORE TO PROVIDE THE RESULTING ICA TO SPRINT THAN IT COSTS AT&T KENTUCKY TO PROVIDE THE KENTUCKY ICA TO SPRINT CLEC AND SPRINT PCS IN KENTUCKY.

A. This is essentially the same point I made above in the context of bill and keep. Under FCC Rule 809(b), an interconnection agreement cannot be adopted if the cost of providing the agreement to the requesting carrier would be greater than the cost of providing the agreement to the carrier that originally negotiated the agreement. The rationale for that Rule applies in the porting context at least as clearly as it does in the in-state adoption context, so the same principle should apply here.

[23] http://www.merriam-webster.com/dictionary/price

Q. IF SECTION 2.3.2 WERE INCLUDED IN THE PORTED AGREEMENT, IN WHAT SENSE WOULD IT COST AT&T ILLINOIS MORE TO PROVIDE THE PORTED ICA TO THE SPRINT COMPLAINANTS THAN IT COSTS AT&T KENTUCKY TO PROVIDE THE AGREEMENT TO SPRINT CLEC AND SPRINT PCS IN KENTUCKY?

A. The answer is on Exhibit JSM-4. There, you can see that given current traffic flows in Kentucky, the facility price sharing arrangement in Kentucky costs AT&T Kentucky approximately *****START CONFIDENTIAL***** $ *****END CONFIDENTIAL*****, while the same arrangement would cost AT&T Illinois *****START CONFIDENTIAL***** $ *****END CONFIDENTIAL*****. So, the incremental cost is about *****START CONFIDENTIAL***** $ *****END CONFIDENTIAL***.**

Q. ASSUMING THE COMMISSION AGREES WITH AT&T THAT SECTION 2.3.2 OF ATTACHMENT 3 OF THE KENTUCKY ICA CANNOT BE PORTED TO ILLINOIS, WHAT WOULD BE SUBSTITUTED FOR THAT PROVISION?

A. In the redlined version of Attachment 3, AT&T has inserted the word "proportional" in Section 2.3.2 in place of the word "equal."

IX. ONLY ONE CMRS PROVIDER IS ELIGIBLE FOR THE PORT

Q. IN SECTION IV OF YOUR TESTIMONY, WHERE YOU GAVE A BRIEF HISTORY OF SPRINT'S PORTING REQUEST, YOU SAID THAT AT&T RESPONDED TO SPRINT'S REQUEST WITH A LETTER THAT STATED THE KENTUCKY ICA COULD BE PORTED ONLY BY ONE CLEC AND ONE CMRS PROVIDER, AND NOT BY ALL THE COMPLAINANTS IN THIS PROCEEDING. IS AT&T STILL INSISTING THAT ONLY ONE CMRS PROVIDER CAN PORT THE KENTUCKY ICA?

A. AT&T continues to believe that because the Kentucky ICA is a contract between an ILEC (AT&T Kentucky), on the one hand, and one CLEC (Sprint CLEC) and one CMRS provider (Sprint PCS), on the other hand, the ICA can be ported only by one CLEC and one CMRS provider. As I said earlier, in order for the ICA to remain the same contract, it must remain an arrangement between an ILEC and one CLEC and one CMRS provider.

That said, and for purposes of this proceeding only, AT&T Illinois urges the Commission to require Sprint to designate one, and only one, of its CMRS affiliates to join Sprint CLEC in the port *only* if the Commission resolves *either* the bill and keep issue *or* the facility price sharing issue in favor of Sprint.

Q. WHAT IS THE BASIS FOR THAT POSITION?

A. As I have explained, the fundamental dollars and cents problem with allowing Sprint to port the Kentucky bill and keep provision to Illinois is that the Sprint companies, in the aggregate, deliver much more local traffic to AT&T Illinois for termination to its end user customers than AT&T Illinois delivers to the Sprint companies for termination to their end user customers. If you look at Exhibit JSM-4, in the chart that shows local MOU data, you will see that the exchange of local traffic between AT&T Illinois and the Sprint companies in the aggregate is out of balance – *****START CONFIDENTIAL***** % to % *****END CONFIDENTIAL***** – and you will also see that the local traffic that AT&T Illinois exchanges with each of the three Sprint CMRS provider Complainants (Sprint PCS, Nextel and NPCR) individually is also out of balance – though only slightly so in the case of Nextel. If the Commission were to reject AT&T Illinois' position that the bill and keep provision in the Kentucky ICA cannot be ported to Illinois, the aggregate imbalance would, as I have explained, give Sprint an economic benefit at AT&T Illinois' expense *and* each individual Sprint CMRS provider would contribute to that distortion. To at least reduce the distortion, the Commission should, in that event, require Sprint to designate one Sprint CMRS provider to join Sprint CLEC in the port.

Q. YOU JUST ADDRESSED THE BILL AND KEEP ASPECT OF AT&T ILLINOIS' ALTERNATIVE ARGUMENT. WHAT ABOUT THE FACILITY PRICE SHARING ASPECT?

A. The same principles apply. The fundamental dollars and cents problem with allowing Sprint to port the Kentucky facility price sharing provision to Illinois is that the Sprint companies, in the aggregate, make much heavier use of the shared interconnection facilities than AT&T Illinois does. In Exhibit JSM-4, the two columns at the extreme right of the chart on the bottom of the page show that the Sprint companies in the aggregate make much heavier use of the shared facilities than AT&T Illinois does, and also shows that each of the three Sprint CMRS provider Complainants contributes to that imbalance. If the Commission were to reject AT&T Illinois' position that the facility sharing provision in the Kentucky ICA cannot be ported to Illinois, the aggregate imbalance would, as I have explained, give Sprint an economic benefit at AT&T Illinois' expense *and* each individual Sprint CMRS provider would contribute to that distortion. So, again, the Commission should, in that event, require Sprint to designate one Sprint CMRS provider to join Sprint CLEC in the port, and thereby reduce the distortion.

X. ADDITIONAL MODIFICATIONS TO ATTACHMENT 3

Q. WHAT WILL YOU DISCUSS IN THIS SECTION OF YOUR TESTIMONY?

A. I will address several additional modifications that AT&T needed to make to Attachment 3 of the Kentucky ICA for purposes of the port to Illinois.

Sections 2.3.4 and 6.19 – PLUs vs. Actuals

Q. WHAT DOES SECTION 2.3.4 OF THE KENTUCKY ICA PROVIDE?

A. It states that BellSouth (now AT&T Kentucky) and Sprint PCS "will use an auditable Wireless Percent Local Usage (PLU) factor as a method for determining whether wireless

traffic is Local or Nonlocal. The Wireless PLU factor will be used for wireless traffic delivered by either party for termination on the other party's network."

Q. WHAT CHANGE HAD TO BE MADE TO SECTION 2.3.4?

A. It had to be deleted.

Q. WHY?

A. In Illinois, AT&T does not use a PLU factor for determining whether wireless traffic is local or non-local. Consequently, the OSS AT&T Illinois uses for billing is not equipped to generate bills based on PLU factors. Section 2.3.4 had to be deleted based on this OSS limitation.

Q. WHAT DOES AT&T USE FOR PURPOSES OF BILLING WIRELESS RECIPROCAL COMPENSATION?

A. AT&T Illinois and wireless carriers in Illinois use switch recordings of actual usage of traffic exchanged between the parties for purposes of determining proper jurisdiction of traffic.

Q. THEN DID AT&T ADD LANGUAGE TO THE KENTUCKY ICA TO PROVIDE FOR THE USE OF SWITCH RECORDINGS?

A. Yes. AT&T added extensive provisions in Section 6.19 that address that subject.

Q. WHAT HAPPENS IF SPRINT CANNOT USE ACTUAL SWITCH RECORDINGS TO RECORD CALL JURISDICTION?

A. Section 6.19.1.2 takes care of that. It provides:

> 6.19.1.2 The Parties recognize that Sprint PCS may not have the technical systems to measure actual usage and bill AT&T pursuant to this Agreement. To the extent Sprint PCS does not have the ability to measure and bill the actual amount of AT&T-to-Sprint PCS Section 251(b)(5) Calls traffic ("Land-to-Mobile Section 251(b)(5) Calls Traffic"), and in the event AT&T also does not record the actual amount of such Land-to-Mobile Section 251(b)(5) Calls Traffic, Sprint PCS shall bill AT&T the charges due as calculated and described in Sections 6.19.1.3 and 6.19.2 below.

. In the event neither party captures actual usage information for Land-to-Mobile traffic, then Sections 6.19.1.3 and 6.19.2 describe how a billing surrogate factor is determined and used:

> 6.19.1.3 When Section 6.19.1.3 applies, the Parties agree to use a surrogate billing factor to determine the amount of Land-to-Mobile Section 251(b)(5) Calls Traffic. The surrogate billing factor shall be deemed to be equal to the Shared Facility Factor, stated in the Pricing Schedule (Wireless). When using the surrogate billing method instead of recording actual usage, the amount Land-to-Mobile Section 251(b)(5) Calls Traffic Conversation MOUs shall be deemed to be equal to the product of (i) the Sprint PCS -to-AT&T (mobile-to-land) Conversation MOU for Section 251(b)(5) Calls (based on AT&T's monthly bill to Sprint PCS) divided by the difference of one (1.0) minus the Shared Facility Factor, (times) (ii) the Shared Facility Factor. When using the surrogate billing method, Sprint PCS shall bill AT&T the charges due under this Section 6.19.1.3 based solely on the calculation contained in the preceding sentence.
>
> **EXAMPLE**
>
> Land-to-Mobile Section 251(b)(5) Calls Traffic Conversion MOUs = [mobile-to-land local Mou's / (1 – Shared Facility Factor)] * Shared Facility Factor
>
> Mobile-to-land MOU = 15,000
> Shared Facility Factor = .20
> Land-to-Mobile Section 251(b)(5) Calls MOU = [15,000/(1-.20)]*.20 =3,750 MOUs
>
> 6.19.2 When Sprint PCS uses the surrogate billing factor billing method set forth above, Sprint PCS shall itemize on each of its bills the corresponding AT&T billing account numbers, by LATA and by state, for Land-to-Mobile Section 251(b)(5) Calls Traffic Conversation MOUs to which the surrogate billing factor is applied. All adjustment factors and resultant adjusted amounts shall be shown for each line item, including as applicable, but not limited to, the surrogate billing factor as provided in this Section 6.19.1.3, the blended call set-up and duration factors (if applicable), the adjusted call set-up and duration amounts (if applicable), the appropriate rate, amounts, *etc*.

Because AT&T has the capability to record actual usage for measurement of wireless traffic, billing for such traffic is more accurate than with the use of a PLU by both parties.

By supplementing the Kentucky ICA language to include more accurate billing language,

the parties will be better able to account for intercarrier compensation billing. Furthermore, where Sprint *does* have the capability to record actual traffic usage in Illinois, billings will again be more accurate than with the use of a PLU factor.

Section 2.9.5 – Pricing for Trunking

Q. WHAT DOES SECTION 2.9.5 OF ATTACHMENT 3 OF THE KENTUCKY ICA COVER?

A. It sets forth the terms for recurring and non-recurring charges for trunking.

Q. HOW DID SECTION 2.9.5 HAVE TO BE CHANGED, AND WHY?

A. It had to be deleted, because AT&T Illinois does not charge carriers for interconnection trunking. Consequently, AT&T does not have an OSS that can be used to bill for trunks.

Q. WHAT LANGUAGE IN MERGER COMMITMENT 7.1 JUSTIFIES THIS CHANGE?

A. As AT&T Illinois witness Jason Constable testifies in connection with Section 2.9.5.1 of Attachment 3, AT&T Illinois does not have an OSS that can be used to bill for trunks, so this is an OSS limitation.

Sections 6.1.5.1 and 6.15 – FX Traffic

Q. WHAT SECTION OF THE KENTUCKY ICA ADDRESSES THE TREATMENT OF FOREIGN EXCHANGE ("FX") TRAFFIC?

A. Section 6.1.5.1 of Attachment 3 requires Sprint CLEC to pay BellSouth originating intrastate switched access rates for any traffic BellSouth sends to a Sprint CLEC FX customer.

Q. WHY WOULD SWITCHED ACCESS RATES APPLY TO FX TRAFFIC?

A. Because a call to an FX telephone number crosses exchange boundaries, and is therefore not a local call subject to reciprocal compensation. Rather, the call is interexchange, and therefore subject to long distance – or switched access – rates. So even though a call to a

FX telephone number looks local to the calling end user, the call actually terminates outside of the local calling area. Some jurisdictions have found that all inter-exchange traffic, including FX traffic, should be billed at interexchange switched access rates. That is the principle reflected in Section 6.1.5.1 of the Kentucky ICA.

Q. HAS THIS COMMISSION DETERMINED DIFFERENT TREATMENT FOR THE TERMINATION OF FX TRAFFIC?

A. Yes, it has. The Commission has ruled that bill and keep is the appropriate mechanism for the treatment of all FX traffic.[24]

Q. WHAT CHANGE DID AT&T MAKE TO THE AGREEMENT IN LIGHT OF THAT RULING?

A. AT&T deleted the Kentucky language in Attachment 3, Section 6.1.5.1 concerning application of switched access rates for the termination of FX traffic, and replaced it with a new Section 6.15, which reflects the Commission's ruling.

Q. DOES MERGER COMMITMENT 7.1 AUTHORIZE THAT CHANGE?

A. It requires it. This is another matter of state-specific pricing.

Q. DOES THIS CHANGE WORK TO THE ADVANTAGE OF EITHER PARTY?

A. Yes, it works to Sprint's advantage, because it means that instead of Sprint paying AT&T access charges for terminating Sprint's FX traffic, AT&T will terminate that traffic without charge.

Q. IN ADDITION TO REQUIRING BILL AND KEEP FOR FX TRAFFIC, HAS THIS COMMISSION DETERMINED AN APPROPRIATE METHOD FOR SEGREGATING AND TRACKING FX TRAFFIC SO THAT IT CAN BE EXCHANGED ON A BILL AND KEEP BASIS?

A. Yes, it has. In preparing this testimony, I carefully reviewed the Commission arbitration decisions ruling that FX traffic is to be exchanged on a bill and keep basis, and saw that

[24] *E.g., MCI Arbitration Decision* at p. 169.

the Commission provided specific contract language for the segregation and tracking of FX traffic. In both of the arbitration proceedings where this Commission determined bill and keep is applicable for FX traffic, contract language for the segregation and tracking of FX traffic was also arbitrated. The Commission determined the appropriate language as follows:

> 15 SEGREGATION AND TRACKING FX TRAFFIC
>
> 15.1 In order to ensure that FX traffic is being appropriately segregated from other types of intercarrier traffic, the parties will assign a Percentage of FX Usage (PFX), which shall represent the estimated percentage of minutes of use that is attributable to all FX traffic in a given month.
>
> 15.1.1 The PFX, and any adjustments thereto, must be agreed upon in writing prior to the usage month (or other applicable billing period) in which the PFX is to apply, and may only be adjusted once each quarter. The parties may agree to use traffic studies, retail sales of FX lines, or any agreed method of estimating the FX traffic to be assigned the PFX.[25]

Q. WAS THAT LANGUAGE REDLINED INTO ATTACHMENT 3 OF THE KENTUCKY ICA FOR INCLUSION IN ILLINOIS?

A. No, it was not. As I mentioned in Section IV of this testimony, AT&T provided the redline of Attachment 3 to Sprint on February 5. Understandably, especially considering that AT&T was expediting the preparation of that redline, AT&T did not at that time pick up on the segregation and tracking language that I focused on while preparing this testimony. As a result, that language is not shown in the redline.

Q. DOES AT&T INTEND TO INCLUDE THE SEGREGATION AND TRACKING LANGUAGE IN THE PORTED ICA NONETHELESS?

A. Of course. AT&T has every intention of applying the requirements of the merger commitment fairly and consistently, so AT&T Illinois will adhere to this Commission's requirements by replacing sections 6.15.5.1, 6.15.5.2, 6.15.6, 6.15.6.1, 6.15.6.2, 6.15.7

[25] *Id*.

and 6.15.8 governing segregation and tracking of FX traffic in the current redline of Attachment 3 with the Commission-approved language I described above.

Sections 6.3 and 6.4

Q. WHAT IS THE SUBJECT MATTER OF SECTIONS 6.3 AND 6.4?

A. In the Kentucky ICA, Section 6.3 concerns CLEC Percent Local Facility, and Section 6.4 concerns CLEC Percentage Interstate Usage.

Q. WHAT CHANGE DID AT&T MAKE TO THOSE PROVISIONS FOR THE ILLINOIS ICA?

A. It deleted them.

Q. WHY?

A. Because these factors do not apply in Illinois, where the Commission has ruled that 1) each carrier is responsible for the facilities on its side of the POI; and 2) separate trunk groups must be established for IXC traffic. As AT&T Illinois witness Jason Constable explains, the Commission approved the use of separate, Feature Group D ("FGD"), trunks for the carriage of IXC traffic in order to facilitate billing for IXC traffic. As the network configuration is necessarily different in Illinois than in Kentucky, the billing terms described in Kentucky Attachment 3, Section 6.3 and 6.4 no longer apply. Billing for traffic over the Feature Group D trunks is governed by AT&T Illinois' Access Services Tariff. (To avoid possible confusion, note that Attachment 3 does include new Sections 6.3 and 6.4, which are encompassed by my testimony at lines 817-821.)

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.